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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,992	12/19/2001	David Bebbington	VPI/00-130-4	2621
Tina Powers 7590 02/24/2009 VERTEX PHARMACEUTICALS INC. 130 Waverly Street Cambridge, MA 02139-4242				
EXAMINER				
RAO, DEEPAK R				
ART UNIT		PAPER NUMBER		
1624				
MAIL DATE		DELIVERY MODE		
02/24/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/026,992

Applicant(s)

BEBBINGTON ET AL.

Examiner

Deepak Rao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 14, 16, 17, 20, 22 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14, 16-17, 20, 22, 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the amendment filed on November 21, 2008.

Claims 1-10, 14, 16-17, 20, 22 and 27 are pending in this application.

The following rejections are maintained:

1. Claims 1-10, 14, 16-17, 20, 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armistead et al., WO 01/60816. The reasons provided in the previous office action are incorporated hereby reference.

Applicant relies on the amendment to the claims and argues that 'applicants have amended claims 1-8, by removing methyl from the definition of R⁸'. The amended claims, however, do not sufficiently remove methyl from the definition of R⁸. As per the claims, R⁸ is defined as "substituted C₁₋₆ aliphatic" and the specification at page 14 provides that 'an aliphatic group may contain one or more substituents and examples of suitable substituents on the saturated carbon of an aliphatic group include those listed for the unsaturated carbon of an aryl group' (see page 14, lines 17-22). Further, the specification provides that "Examples of suitable substituents on the unsaturated carbon atom include halogen, -R⁹, ..." (see page 13, lines 26-29); "wherein each R⁹ is selected from hydrogen, ..." (see page 14, lines 5-6). Therefore, the definition of R⁸ continues to include 'a methyl group' because the substituents intended for the aliphatic groups includes a hydrogen. As previously indicated, the instant claims differ from the

reference disclosed compounds by having a methyl in place of hydrogen. Accordingly, the rejection is maintained.

2. Claims 1-10, 14, 16-17, 20, 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon et al., WO 03/026664 (effective filing date September 26, 2001). The reasons provided in the previous office action are incorporated hereby reference.

Applicant relies on the amendment to the claims and argues that 'applicants have amended claims 1-8, by removing methyl from the definition of R^{8t}. The amended claims, however, do not sufficiently remove methyl from the definition of R⁸. As per the claims, R⁸ is defined as "substituted C₁₋₆ aliphatic" and the specification at page 14 provides that 'an aliphatic group may contain one or more substituents and examples of suitable substituents on the saturated carbon of an aliphatic group include those listed for the unsaturated carbon of an aryl group' (see page 14, lines 17-22). Further, the specification provides that "Examples of suitable substituents on the unsaturated carbon atom include halogen, -R^o, ..." (see page 13, lines 26-29); "wherein each R^o is selected from hydrogen, ..." (see page 14, lines 5-6). Therefore, the definition of R⁸ continues to include 'a methyl group' because the substituents intended for the aliphatic groups include 'a hydrogen'. As previously indicated, the instant claims differ from the reference disclosed compound of Example 69 by having a methyl group at a different position, i.e., at the 6-position as compared to the reference compound which contains a methyl substituent at the 5-position. Accordingly, the rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deepak Rao whose telephone number is (571) 272-0672. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached at (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**/Deepak Rao/
Primary Examiner
Art Unit 1624**

February 24, 2009